

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DICK L. POFF

Claimant

VS.

IBP, INC.

Self-Insured Respondent

Docket No. 233,909

ORDER

Claimant requested review of the August 22, 2003 Award by Administrative Law Judge Brad E. Avery. The Board heard oral argument on January 20, 2004.

APPEARANCES

Scott L. Johnson of Topeka, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The claimant filed four separate workers compensation claims alleging work-related injuries on four separate dates to four different parts of his body.¹ Although all four claims were heard at one regular hearing, the Administrative Law Judge (ALJ) conducted the hearing so that all the evidence pertaining to one claim was heard and terminal dates were established before the hearing proceeded with the evidence pertaining to the next claim. The ALJ then issued four separate awards.

¹ Docket No. 233,909 alleging bilateral carpal tunnel syndrome; Docket No. 247,591 alleging varicose veins in both lower extremities; Docket No. 250,093 alleging injuries to the back, hands and fingers; and, Docket No. 270,756 alleging hearing loss in both ears.

In this docketed claim, the claimant alleged he suffered bilateral carpal tunnel syndrome from performing his repetitive work activities for the respondent. The respondent admitted claimant suffered personal injury arising out of and in the course of employment and the parties stipulated to an accident date of August 7, 1997. The sole issue for determination by the ALJ was the nature and extent of disability. The ALJ found that as a result of his bilateral carpal tunnel the claimant suffered a 6 percent permanent partial whole body functional impairment.

The claimant requested review and raised the issue of the nature and extent of disability. Claimant argues that the ALJ erred in separating each claim and instead should have considered the cumulative effect of the injuries suffered in all four claims which claimant further argues would result in a finding that he is permanently and totally disabled.

The respondent requests the Board to affirm the ALJ's Award. Respondent argues that claimant filed four separate and distinct claims and that there is no basis to enter a single award determining the cumulative effect of all four distinct and separate injuries. Consequently, respondent requests the Board to likewise determine each claim separately.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant argues that the cumulative effect of the four separate injuries should have been considered and only one award entered. The Board disagrees.

Each of the alleged accidents resulted in separate and distinct injuries unrelated to the others. Nor was it alleged that the injury in a claim was the natural, direct or probable consequence of another claim. At the regular hearing on November 15, 2002, the ALJ told the parties that each claim was for a separate injury and all the evidence pertaining to each individual claim would be taken before the evidence pertaining to the next claim would be taken. The ALJ noted:

Okay. Now, as a matter of procedure, we're going to go down docket by docket and we'll need to address each issue and each docket as we go through. When you are through with the evidence in one docket, we'll close that record and then we will proceed to the next docket. These are all apparently separate or alleged separate injuries, so we'll need to address each issue individually as we go through each docket individually as we go through. Is that clear?²

² R.H. Trans. at 9-10.

No objection was made to this procedure nor was there any request to consolidate the claims for entry of a single award. The Board finds that each claim must be determined on its own merits separate from the other filed claims.

The claimant worked on the production line for respondent and began experiencing problems with his upper extremities. Ultimately, claimant was diagnosed with bilateral carpal tunnel syndrome. On October 9, 1997, Dr. Bernard Hearon performed a left carpal tunnel release and on November 13, 1997, Dr. Hearon performed a right carpal tunnel release.

Claimant was released to return to work and was provided light-duty work washing, trimming and cooking intestines. Claimant no longer was required to use knives and this job became his permanent job until he quit working for respondent. Claimant was initially released to light-duty work with restrictions, but on February 23, 1998, he was released to full-duty work with no restrictions. After claimant returned to work he never requested nor received any further treatment for his wrists. Claimant finally gave notice and quit his job effective June 29, 2000. Claimant said he was quitting because everything was hurting and he couldn't take the pain any longer.

At his attorney's request, the claimant was examined by Dr. Truett L. Swaim on June 19, 2001. Dr. Swaim admitted that when he rated claimant's upper extremities he did not separate out the rating for claimant's carpal tunnel syndrome. Instead the doctor included all the findings in claimant's upper extremities which included a shoulder condition that was the result of a prior workers compensation claim as well as the trigger finger conditions attributable to injury in 1988. The ALJ noted it was difficult to determine which specific injuries Dr. Swaim rated and the Board agrees.

The ALJ ordered an independent medical examination of claimant by Dr. Peter V. Bieri. Dr. Bieri opined the claimant suffered a 10 percent upper extremity bilaterally for residuals of entrapment neuropathy. The doctor noted that the upper extremity ratings would convert to a 6 percent whole person impairment bilaterally. The doctor testified that claimant had a 12 percent permanent partial whole body functional impairment as a result of his bilateral upper extremity injuries.

The ALJ concluded that Dr. Bieri's opinion was the most persuasive and the Board agrees. However, the ALJ incorrectly determined that Dr. Bieri had rated claimant's bilateral carpal tunnel syndrome at 6 percent. As previously noted, and admitted by respondent at oral argument before the Board, Dr. Bieri determined claimant suffered 6 percent whole person impairment for each upper extremity which combine for a 12 percent permanent partial whole body functional impairment. Consequently, the ALJ's Award will be modified to reflect claimant suffered a 12 percent permanent partial whole person functional impairment.

The claimant alleged the cumulative effect of all four claims is that he is now permanently and totally disabled. But there is no evidence that the injuries suffered in this

claim rendered claimant unable to engage in substantial and gainful employment. The parties stipulated to an accident date of August 7, 1997. After the bilateral carpal tunnel release surgeries, the claimant returned to light-duty work and then was released to full-duty work with no restrictions. After released to full-duty work without restrictions, the claimant continued working for a little over two additional years. And the claimant neither requested nor received any further treatment for his wrists. It cannot be said the injuries claimant suffered in this claim rendered claimant unable to engage in substantial gainful employment.

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Brad E. Avery dated August 22, 2003, is modified to reflect claimant suffered a 12 percent permanent partial whole person impairment of function. The Award is affirmed in all other respects.

The claimant is entitled to 9 weeks of temporary total disability compensation at the rate of \$277.29 per week or \$2,495.61 followed by 49.8 weeks of permanent partial disability compensation at the rate of \$277.29 per week or \$13,809.04 for a 12 percent functional disability, making a total award of \$16,304.65, which is due, owing and ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of February 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott L. Johnson, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director